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Attorneys for Respondent, Michele Fiore

BEFORE THE NEVADA COMMISSION ON JUDICIAL DISCIPLINE
STATE OF NEVADA

In the Matter of the,

HONORABLE MICHELE FIORE

Justice of the Peace, Pahrump Township, County
of Nye, State of Nevada

Respondent.

COMMISSION CASE NO. 2025-108-P

**THE HONORABLE JUDGE MICHELE FIORE'S REPLY TO OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS COUNT 1 OF THE FIRST AMENDED
FORMAL STATEMENT OF CHARGES**

The Opposition confirms why Count One fails. It concedes the alleged solicitation and use of donations occurred in 2019–2020, before Judge Fiore took office, yet identifies no discrete post-oath act that violates a definitively proscribed law. Nor does it supply the missing adjudication: the federal verdict never became a judgment of conviction, the pardon issued before sentencing, and no court has adjudicated embezzlement, conversion, or unjust enrichment. The Opposition's continuing-wrong theory and disjunctive pleading do not cure those defects. Count One should therefore be dismissed or, at minimum, narrowed to a single specifically defined post-appointment violation.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL ARGUMENT

A. THE OPPOSITION IDENTIFIES NO POST-OATH ACT AND DEFENDS JURISDICTION OVER CONDUCT IT CONCEDES WAS PRE-OFFICE.

The Opposition does not dispute the chronology: the alleged solicitation and diversion occurred “prior to becoming a judicial officer” in 2019–2020, and Judge Fiore was not sworn in until December 21, 2022. *See* Opposition at 2. That concession is fatal because NRS 1.440(2) limits discipline to acts or omissions occurring on or after the judge enters office.

NRS 1.440(2) draws the temporal line expressly. The Commission’s authority begins when the judge assumes office—not before. Consistent with that principle, *In re Burrell* held that a judicial commission’s authority reaches only misconduct by sitting judges and does not create “pendent” jurisdiction over pre-bench acts. 6 S.W.3d 869 (Mo. 1999).

The Opposition’s reliance on *Fiore v. Nevada Commission on Judicial Discipline* is misplaced. The Nevada Supreme Court found only jurisdiction over the matter under NRS 1.440; it did not authorize discipline for conduct completed before the oath.

The Opposition cannot reconcile its theories. It says Count One is based on “misconduct while in office,” yet concedes the alleged solicitation and diversion predated judicial service and asks the Commission to reach those pre-office acts. *See* Opposition at 2, 4. Either Count One rests on a post-oath act the Opposition has not identified, or it reaches conduct the Commission cannot discipline. The charging document pleads only post-oath misconduct; Special Counsel cannot save it with an unpleaded pre-office theory.

The Opposition’s remaining authorities do not establish jurisdiction over completed pre-office conduct. They involve different statutory schemes, in-office conduct, prior judicial office, advocacy positions, or convictions entered—none of which exists here. Two cases involve a conviction,¹ so they are distinguishable from the instant case. Several of the remaining cases are

¹ *In re Greenberg*, 442 Pa. 411, 280 A.2d 370 (1971) and *In re Pazuhanich*, 858 A.2d 231 (Pa. Ct. Jud. Disc. 2004).

1 equally unpersuasive: *State ex rel. Nebraska State Bar Ass'n v. Krepela*, 259 Neb. 395, 610 N.W.2d
2 1 (2000) relies on language that Nevada has not adopted (misconduct occurred *before* or during
3 service as a judge). *In the Matter of: M. John Steensland, Jr., Retired District Judge of the*
4 *Twentieth Judicial Circuit of Alabama*, 2011 WL 9367407 (Steensland) and *In the Matter of: Trac*
5 *le Todd Circuit Court Judge Birmingham Division Criminal Division Jefferson Cnty., Al*, 2021
6 WL 2653531 (Todd)(Commission dismissed the Complaint) rest on *in-office* conduct, not pre-
7 bench. *In the Matter of Proceedings Against Suffolk County District Court Judge Floyd Sarisohn*,
8 26 A.D. 2d 388 (NY 1966) acts alleged to have been committed by respondent judge of district
9 court occurred while he held prior judicial office as justice of peace. *In re Whitaker*, 463 So. 2d
10 1291 (La. 1985) affirmatively holds that pre-office conduct generally *cannot* be the sole basis for
11 discipline. Lastly, the cite to *In the Matter of the Proceeding Pursuant To Section 44, Subdivision*
12 *4, of the Judiciary Law In Relation To Bryan R. Hedges, A Judge of the Family Court, Onondaga*
13 *County*, 2012 WL 4341141 is drawn from the Commission Counsel's memorandum in that
14 proceeding rather than a court opinion, so it reflects an advocacy position, not a holding.

15 Like *Whitaker*, *In re Huckaby* supports Judge Fiore's position: pre-office conduct cannot
16 be the sole basis for judicial discipline. *In re Huckaby*, 95-0041 (La. 5/22/95), 656 So. 2d 292,
17 296. Count One rests on exactly that forbidden sole basis—a pre-office act with no discrete post-
18 oath violation.

19
20 **B. THERE IS NO ADJUDICATED VIOLATION: THE VERDICT IS NOT A**
21 **CONVICTION, AND THE PARDON ISSUED BEFORE ANY JUDGMENT.**

22 Count One alleges violations of criminal embezzlement, civil conversion, and/or unjust
23 enrichment. Opposition at 3. Yet no embezzlement charge, civil action, or judgment exists on any
24 such theory. The possibility that limitations periods remain open is not clear and convincing
25 evidence of a violation. *See* NRS 1.4673(2).

26 Nor can the October 3, 2024 verdict supply the missing adjudication. A verdict is not a
27 conviction until sentence is imposed and judgment entered. *Stegemann v. Rensselaer Cnty.*

1 *Sheriff's Off.*, 648 F. App'x 73, 77 (2d Cir. 2016). In *United States v. Arpaio*², where a pardon
2 issued before sentencing, the court held the defendant "never suffered a final judgment of
3 conviction" because "[t]he sentence is the judgment." Here, the pardon issued before sentencing,
4 and the federal court closed the case without entering judgment. As in *Arpaio*, with no judgment
5 of conviction, no conviction-based consequences attach.

6 The Opposition's pardon cases are inapposite because each rests on an existing conviction.
7 *In re Sang Man Shin* held only that a pardon does not erase the historical fact of a conviction;
8 *Hirschberg* and the attorney-discipline cases are the same. They do not address a case where, as
9 here, no conviction ever entered. Indeed, *Sang Man Shin* recognizes that a pardon granted before
10 conviction prevents conviction-based penalties and disabilities from attaching. 125 Nev. 100, 105,
11 206 P.3d 91, 94 (2009).

12 The Commission recognized that limit in its May 19, 2025 Order, rescinding Respondent's
13 felony-based suspension after the criminal matter closed without judgment. Count One seeks the
14 same prohibited punishment in disciplinary form.

15 Count One also pleads three unadjudicated state-law theories. To sustain it, the
16 Commission would have to decide, in the first instance, whether Judge Fiore committed an
17 uncharged crime or unfiled tort. Nevada law does not permit discipline based on conduct that is
18 not definitively proscribed or proved in conformity with the formal charges. *Whitehead v. Nevada*
19 *Comm'n on Jud. Discipline*, 110 Nev. 128, 143, 906 P.2d 230 (1994).

20
21 **C. CONTINUED NONPAYMENT OR NON-NOTIFICATION IS NOT A NEW IN-**
22 **OFFICE WRONG.**

23 The Opposition recasts completed pre-office conduct as a "continuing wrong" based on
24 alleged nonpayment or non-notification. *See* Opposition at 8. But it cites no authority converting
25 the lingering effect of a completed act into new in-office misconduct. *Huckaby* required an
26 affirmative post-oath act and barred discipline based solely on pre-office conduct.

27 NRS 1.4655 does not expand jurisdiction. It is a limitations statute that tolls certain

28 ² 951 F.3d 1001 (9th Cir. 2020).

1 complaints involving a continuing course of conduct; it does not override NRS 1.440's substantive
2 limit on the Commission's authority. A tolling rule cannot manufacture jurisdiction.

3
4 **D. COUNT ONE REMAINS IMPERMISSIBLY DUPLICITOUS.**

5 Count One combines three distinct theories—criminal embezzlement, civil conversion, and
6 unjust enrichment—pleaded disjunctively. *See* Opposition at 8. Alternative pleading does not cure
7 the lack of a single defined violation.

8 Special Counsel must prove facts justifying discipline in conformity with the formal
9 charges. *In re Mosley*, 120 Nev. 908, 912, 102 P.3d 555, 558 (2004). A count that pleads three
10 materially different theories in the alternative gives neither the Commission nor Judge Fiore a
11 single defined violation to address. Fair notice requires charges that tie alleged violations to facts
12 and identify the specific provisions allegedly violated. *Andress-Tobiasson v. Nevada Comm'n on*
13 *Jud. Discipline*, 136 Nev. 777, 475 P.3d 776 (Table), 2020 WL 6870489 (2020). At minimum,
14 Special Counsel should be required to elect and plead one specifically defined theory.

15 **II.**

16 **CONCLUSION**

17 The Opposition identifies no discrete post-oath act, no adjudicated violation, and no single
18 defined theory. Count One rests on pre-office conduct, a verdict that never became a judgment,
19 and disjunctive pleading. Respondent respectfully requests dismissal with prejudice or,
20 alternatively, an order requiring Special Counsel to elect one specifically defined violation and
21 identify the post-appointment act alleged to support it.

22 Dated this 21st day of September, 2026.

23 CLARK HILL PLLC

24 /s/ Paola M. Armeni

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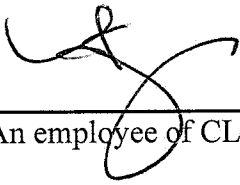
CERTIFICATE OF SERVICE

The undersigned, an employee of Clark Hill PLLC, hereby certifies that on the 21
day of September, 2026, I served a true and correct copy of the foregoing **THE HONORABLE**
JUDGE MICHELE FIORE'S REPLY TO OPPOSITION TO RESPONDENT'S MOTION
TO DISMISS COUNT 1 OF THE FIRST AMENDED FORMAL STATEMENT OF
CHARGES via electronic means and U.S. Mail:

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